

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3824 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ILYAS @ BALO NURMOHAMMED

BHATTI DAFER SINDHI

Versus

STATE OF GUJARAT

Appearance:

Ms. Jayshree Bhatt for

MRS MADHUBEN SHARMA, Advocate for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/09/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Jayshree Bhatt for Mrs.
Madhuben Sharma, Advocate for the petitioner and learned
A.P.P. Mr. M.A. Patel for the respondents.

The petitioner has approached to this Court under
Article 226 of the Constitution of India challenging the

legality and validity of the detention order dated 16-11-1998 passed by the respondent no.2 against the petitioner in exercise of powers conferred under Sec.3(1) of the Prevention of Antisocial Activities Act, 1985 ("PASA" for short).

2. The petitioner has produced the impugned order and committal order vide Annexure "A" at pages 11 & 12 while grounds of detention is produced vide Annexure "B" at pages 13 to 17 of the compilation.

3. Perusal of the grounds of detention reveal that the respondent no.2 as detaining authority has classified the petitioner as a " dangerous person" within the meaning of Sec.2(c) of " PASA" and that enforcement of ordinary law is not sufficient to prevent the petitioner from continuing his antisocial activities which adversely affects the maintenance of public order and as such the impugned order is passed.

4. That material produced with the grounds of detention disclose that six criminal cases were registered against the petitioner as under:

The first criminal case registered against the petitioner is vide CR no.180/97 at Dessa City Police Station for the offences made punishable under Secs.457 and 380, IPC. It is inter alia alleged that a theft was committed at Jain Temple situated at Shreepal Society, Deesa on the night of 7-12-1997 and temple ornaments worth Rs.93,750/- were stolen for which said crime was registered. That during investigation, the petitioner was arrested on 12-6-1998. That at the instance of the petitioner articles worth Rs.9500/-were recovered under a discovery Panchnama.

The second criminal case registered against the petitioner is vide CR no.182/97 at Deesa City Police Station for the offences made punishable under Secs.457 and 380 of the Indian Penal Code. It is inter alia alleged that the house of the informant was broke opened and tape recorder of Phillips make worth Rs.2,950/-was stolen. That the petitioner was arrested during the investigation on 15-6-1998. The matter is pending for trial in the Court.

The third criminal case registered against the petitioner is vide CR no.282/97 on 16-12-1997. It is inter alia alleged that the informant was wrongfully confined in a room by locking the door of the room from outside and a theft was committed in the adjacent room.

That temple ornaments utensils and cash amount of Rs.13,250/- were stolen from the charity box for which offence was registered under Secs.342, 457, 380 read with Sec.114, IPC. During the investigation, the petitioner was arrested on 28-5-1998. That at the instance of the petitioner, 600 gms. of silver and a brass bell worth Rs.4350/- have been recovered under a discovery Panchnama. That the matter is pending for trial in Court.

The fourth criminal case registered against the petitioner is vide CR 2/98 wherein it is alleged that lock of Jain Temple was broke opened on the night of 3/4-1-1998 and articles worth Rs.29,930/- were stolen. During the investigation, the petitioner was arrested on 4-6-1998 and at the instance of the petitioner, 800 gms. of silver and 7.250 gms. of gold aggregating the value of Rs.7780/-were recovered under discovery Panchnama and the case is pending for trial.

The fifth criminal case registered against the petitioner is vide CR no.109 dt.28-5-1998. It is inter alia alleged that a theft was committed at the goddess temple situated at Kardosana Village, Taluka Deesa and articles worth Rs.5800/- like amplifier, speaker, wall-clock, etc. were stolen for which offence under Secs.457 and 380 was registered. That during the investigation on 10-6-1998, the petitioner was arrested. The matter is pending for trial in Court.

The sixth criminal case registered against the petitioner is vide CR no.7/98 dated 11-2-1998. It is inter alia alleged that on the night of 11th February, 1998 the informant was beaten by iron bar and stone throwing and both his hands were tied down. That the theft was committed in the inn of the temple and articles like wall-clock and temple ornaments worth Rs.13,460/-were looted for which offence made punishable under Sec.395 read with Sec.34, IPC was registered. That during the investigation, the petitioner was arrested on 19-6-1998. That at the instance of the petitioner, articles like wall-clock and a knife were recovered under discovery Panchnama. That the matter is pending in Court for trial.

5. On the basis of the aforesaid material, the respondent no.2 has come to the conclusion that the petitioner is a " dangerous person" whose nefarious and criminal activities are likely to act prejudicial to the maintenance of public order and as such, the impugned

order is passed.

6. The petitioner has challenged the impugned order on numerous grounds. However, during the submissions, the contest is restricted to two contentions only. They are:

(a) That though the petitioner was in judicial custody on the date of taking action, the detaining authority has shown apprehension that the petitioner is likely to continue his activity which would adversely affect the maintenance of public order. That on facts such apprehension being misplaced, the impugned order is vitiated and deserves to be set aside.

(b) That the last incident registered against the petitioner being of 28-5-1998, the live link between the alleged criminal activity and the date of taking action 16-11-1998 was snapped and on account of inordinate delay subjective satisfaction reached by the detaining authority is vitiated.

7. In the matter of ELES N. N. PATIL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997(1) G.L.H. 381 this Court having referred the observations made by the Supreme Court in the matter of JAGAN NATH BISWAS V. THE STATE OF WEST BENGAL, AIR 1975 SC 1516 has taken a view that detention order having been passed subsequent to the incidents of criminal activity ipso facto is not fatal because delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority.

8. In the instant case, the grounds of detention do not disclose any explanation, much less, a reasonable explanation to explain the delay of about five months and 18 days from the date of last incident registered against the petitioner and the date of taking the impugned action. Under the circumstances, the inordinate delay has vitiated the subjective satisfaction of the detaining authority and as such, the impugned order deserves to be quashed and set aside.

9.. As the petition succeeds on the above stated point, it is not necessary to deal with the other contention as raised.

10. On the basis of the aforesaid discussion, the

petition is allowed. The impugned order dated 16-11-1998 passed by the District Magistrate, Banaskantha against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Ilyas alias Balo Nurmohammed Bhatti Dafer Sindhi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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